

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

Annual Report

Under A.R.S. § 41-1051(F)

G. Alex Turner, Chair
Jeanne M. Hann, Administrator
July 31, 2004

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

July 1, 2003 through June 30, 2004

The purpose of the Governor's Regulatory Review Council (Council) is to review and approve or return rules; preambles; and economic, small business, and consumer impact statements prepared by state agencies under grants of rulemaking authority from the Arizona Legislature. The standards that the Council uses to decide whether to approve or return an agency's rule-related materials are at A.R.S. § 41-1052(C) through (E).

COUNCIL RESPONSIBILITIES

Under the Administrative Procedure Act, the Council is required to:

1. Review and approve or return, in whole or in part, a rule, preamble, and economic, small business, and consumer impact statement submitted by an agency (A.R.S. § 41-1052(B));
2. Schedule a periodic review of each agency's rules and approve or return, in whole or in part, the agency's report on its review (A.R.S. § 41-1056(B));
3. Receive reports of compliance with time-frame rules from agencies that issue licenses and report results to the governor, president of the senate, and speaker of the house of representatives (A.R.S. § 41-1078);
4. Receive and hear appeals regarding an agency's practice or substantive policy statement (A.R.S. § 41-1033(B));
5. Receive and hear appeals regarding the economic, small business, and consumer impact statement of an agency's rules (A.R.S. § 41-1056.01(D));
6. Receive and hear appeals regarding an agency delegation agreement (A.R.S. § 41-1081);
7. Receive certifications of compliance with A.R.S. § 41-1091 from all agency heads (A.R.S. 41-1091(D)); and
8. Receive reports from agencies regarding their progress toward completing the courses of action established in their five-year-review reports (A.R.S. § 41-1056(H)).

COUNCIL ACTIVITIES

1. Review and Act upon Submitted Rules

A.R.S. § 41-1052 requires an agency to submit and obtain Council's approval of a rule package, which consists of a rule, preamble, and economic, small business, and consumer impact statement, before the rule package is filed with the Secretary of State. In 2003-2004, 33 different agencies submitted 101 rule packages for review and action by the Council. In these packages, the agencies repealed 326 rules, made 470 new rules, amended 470 existing rules, and renumbered 67 existing rules for a total of 1,333 different rulemaking actions. The Council approved 1,330 of the rules on first hearing. The Council returned two rules¹ that were later approved and returned one rule² that was not later approved. In accordance with A.R.S. § 41-1051(F), a list of agency rules approved by Council under A.R.S. § 41-1052 during this year is appended to this report.

2. Schedule and Act upon Five-year-review Reports

A.R.S. § 41-1056 requires each agency to review all of its rules at least once every five years to determine whether any rule should be amended or repealed and to summarize its findings in a report to Council. During this year, 31 different agencies submitted and received Council's approval of 50 five-year-review reports. The reports summarized reviews of 1149 rules. The agencies determined that 777 (68 %) of these rules need to be repealed or amended and provided the Council with a schedule of when the planned rulemakings will be completed. A list of agency five-year-review reports approved by Council this year under A.R.S. § 41-1056 is appended to this report.³

¹ These rules were from the Arizona Health Care Cost Containment System.

² This rule was from the Department of Transportation.

³ Eleven of the agencies that submitted a five-year-review report this year reviewed and reported on the same rules that they reviewed and reported on five years ago without completing the course of action established in the previous five-year-review report. These agencies and the rules reviewed again are as follows:

- Agriculture, Department of: A. A.C. Title 3, Chapter 4, Articles 2 and 3 (Plant Services)
- Economic Security, Department of: A.A.C. Title 6, Chapter 1, Articles 1 – 5 (Public Participation, Civil Rights); Title 6, Chapter 4, Articles 1 through 6 (Rehabilitation Services); and Title 6, Chapter 11, Articles 1 and 2 (Job Training)
- Environmental Quality, Department of: A.A.C. Title 18, Chapter 2, Articles 6 and 8 (Air Pollution Control) and A.A.C. Title 18, Chapter 6, Articles 1 – 3 (Pesticides and Water Pollution Control)
- Game & Fish, Commission of: A.A.C. Title 12, Chapter 4, Article 4 (Live Wildlife)
- Health Services, Department of: A.A.C. Title 9, Chapter 10, Article 5 (Adult Day Health Care Facilities)
- Homeopathic Medical Examiners, Board of: A.A.C. Title 4, Chapter 38
- Industrial Commission: A.A.C. Title 20, Chapter 5, Articles 1 (Workers Compensation Practice), 2 (Self Insurance), and 6 (OSH Construction Standards)
- Land Department: A. A. C. Title 12, Chapter 5, Articles 1 – 4 (Procedures and Sales), 22 (Geothermal Resources), and 25 (Classifying Trust Lands for Conservation)
- Public Safety, Department of: A. A. C. Title 13, Chapter 1, Article 1 (Criminal Identification Section)
- Revenue, Department of: A.A.C. Title 15, Chapter 4, Articles 2, 3, and 5 (Property and Special Taxes)
- Transportation, Department of: A.A.C. Title 17, Chapter 4, Articles 2 (Vehicle Title) and 3 (Taxes)

3. Receive Reports on Progress toward Completing the Courses of Action Established in Five-year-review Reports

A.R.S. § 41-1056(H) requires agencies to report on their progress toward completing the courses of action established in their five-year-review reports. Of the 60 agencies required to submit a progress report this year⁴, 44 (73%) reported lack of progress toward completing one or more of the courses of action established in their five-year-review reports. A list of these agencies and the rules on which they report lack of progress is appended to this report.

Only two agencies (3 %) failed to submit the required progress report. These agencies are the Board of Behavioral Health Examiners and the Boxing Commission.

4. Receive Reports of Compliance with Time-frame Rules

All agencies that issue licenses are required by A.R.S. § 41-1073 to make rules establishing overall time frames during which the agency will decide either to grant or deny each license type. There are still some agencies that have not made the time-frame rules required by statute. These agencies are:

- Land, Department of
- Osteopathic Examiners in Medicine and Surgery, Board of
- Public Safety, Department of

In accordance with A.R.S. § 41-1078(B), on December 1, 2003, the Council submitted a report regarding agencies' compliance with their time-frame rules during the 2002-2003 fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. A copy of the report and summary form are appended to this report.

5. Receive and Hear Appeals Regarding an Agency's Practice or Substantive Policy Statement, Regarding the Economic, Small Business, and Consumer Impact Statement of an Agency's Rules, or Regarding an Agency Delegation Agreement

Appeal of an Agency Delegation Agreement

During the past year, no appeal was made to Council regarding an agency delegation agreement.

⁴ An agency is required to submit a report if it reported lack of progress in last year's report or if it submitted a new five-year-review report to Council during this year.

Appeal of an Agency Practice or Substantive Policy Statement

A.R.S. § 41-1033(B) allows a person to appeal to Council an agency's decision not to review an existing practice or substantive policy statement that the person asserts constitutes a rule. Council received one appeal under A.R.S. § 41-1033 this year. Mr. Gordon Robineau appealed the decision of the Arizona Board of Tax Appeals to deny Mr. Robineau's request that the Board review its practice of using a burden of proof standard at hearings that was essentially identical to the burden of proof standard in a rule that the Board allowed to expire under A.R.S. § 41-1056(E) in August 2002. At the request of at least three members of the Council, the appeal was scheduled to be heard. Before the hearing, however, Mr. Robineau and the Board agreed to postpone the hearing until the end of the legislative session because the legislature was considering a bill that addressed the issue in the appeal. On April 13, 2004, the governor approved SB 1361. Shortly after that, Mr. Robineau withdrew his appeal.

Appeal of an Agency Economic, Small Business, and Consumer Impact Statement

During the past year, no appeal was made to Council regarding the economic, small business, and consumer impact statement of an agency's rules.

6. Receive Certifications of Compliance with the Substantive Policy Statement Directory Requirement

A.R.S. § 41-1091 requires all agencies to publish annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The directory, rules, substantive policy statements, and any materials incorporated by reference must be kept in one location and open to public inspection. Under A.R.S. § 41-1091(D), an agency head is required annually to certify to the Council that the agency is in compliance with this requirement.

One hundred fourteen agencies submitted letters certifying their compliance during this year. As required by A.R.S. § 41-1051(F)(2), the 10 agencies that failed to submit the required certification are listed:

- Arizona Historical Society
- Boxing Commission
- Education, Board of
- Geographic and Historic Names Board
- Mine Inspector
- Neighborhood Preservation and Investment Commission
- Power Authority
- Psychiatric Security Review Board
- Regents, Board of
- Space Commission